Service Date: February 4, 1999

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Application of	)	UTILITY DIVISION
MONTANA POWER COMPANY for Approval	)	
of its Electric Utility Restructuring Transition Plan	)	DOCKET NO. D97.7.90
Filed Pursuant to Senate Bill 390.	)	ORDER NO. 5986g

ORDER ALLOCATING UNIVERSAL SYSTEM BENEFITS FUNDS

Background

1. The Montana Public Service Commission (Commission) issued its Order on Tier 1 Issues, Order No. 5986d, on June 23, 1998, addressing large customer choice, accounting order proposals to track costs stranded during the period before the Final Order, customer education and protection, pilot programs; and methods to choose electricity suppliers. The Commission issued Order No. 5986e on September 10, 1998, modifying in part the standards of conduct.

2. The Commission conducted a public hearing on the single issue of the Universal System Benefits Charge (USBC) on October 7, 1998.

3. Senate Bill 390 established the funding level of a public utility's universal system benefits programs at 2.4 percent of the annual retail sales revenues for the calendar year ending December 31, 1995. The 1997 legislature provided for the recovery of the costs of all the universal system benefits programs through the imposition of a USBC assessed at the meter for each local utility system customer, to begin January 1, 1999. § 69-8-402, MCA.

4. The Commission issued Order No. 5986f on December 23, 1998, effective January 1, 1999, authorizing the imposition of the USBC to recover the universal system benefits programs at the level set by the 1997 legislature. The Commission authorized MPC to modify the rates in its tariff schedule, E-USBC-1, to collect an annual universal system benefits program funding level equal to $8,559,615. The Commission also approved MPC's proposed Special Terms and Conditions related to the administration of Large Customer Credits, as introduced in MPC-Exhibit 8. MPC filed compliance tariffs and work papers to implement the required rate adjustments and tariff terms and conditions, approved by delegation to Commission staff.

5. The Commission recognized in Order No. 5986f that MPC had been recovering some expenses related to the Universal System Benefits Program through previously approved rate schedules. The Commission directed MPC to account for the temporary double-recovery of these expenses in its Tier 2 filing. The Commission will make these rate adjustments in the final order on Tier 2 of this proceeding.

6. In this Order No. 5986g, the Commission addresses the allocation of the funds to various public purposes and implementation of Universal System Benefit Programs.

Summary of Testimony and Positions of Parties

Montana Power Company Prefiled Testimony, July 1997

7. In its July 1997 prefiled testimony, MPC's witnesses testified that MPC incurred costs related to several public purpose programs in place before Senate Bill 390. MPC's business plan projected about $4-5 million in annual spending for conservation, including low-income weatherization. The 10 percent low-income rate discount consisted of about $473,486, based on test year data. MPC also reported about $200,000 in miscellaneous USBC related costs.

8. MPC's total USBC obligation is about $8.6 million per year, under the requirements of Senate Bill 390. MPC proposed to assess a USBC at the meter for customers served under the MSS rate schedules. MPC would recover USBC costs for customers not subscribing to market supply service through conventional rates but would identify the USBC component as an information item on bills. Pat Corcoran sponsored a proposed USBC rate schedule that identified USBC charges by customer class.

9. David Houser testified on MPC's proposed allocation of USBC funds to various public purposes. MPC would commit 17% of the USBC funds to low-income assistance and establish a Large Customer Rebate (LCR) account to set aside funds for crediting large customer USBC obligations to the extent those customers made qualifying investments in their own facilities. Mr. Houser stated that except for the minimum 17% for low-income programs, the budget allocations should be flexible so MPC can move dollars between items as conditions warrant.

10. Mr. Houser testified that MPC proposed to define the program requirements for the LCR account, using a qualified, objective third party to pre-qualify and verify investments by

large customers. At the end of each 12-month period, the third party would calculate the amount of the rebate. MPC would cap the amount of the rebate at the level of the individual customer's total annual USBC contribution. If a customer did not claim credits for its total USBC contribution, the remaining amount in the LCR account at the end of the year would be made available to support other public purposes in the following year.

11. Mr. Houser stated that in the past the cost-effectiveness of MPC's conservation investments was assessed on the basis of the integrated utility's cost structure, which assumed an ongoing obligation to serve customers' commodity needs. He stated that this situation is no longer relevant. There are alternatives to assessing cost-effectiveness in the new environment, including (1) a customer perspective that focuses on the price of energy for the customer and the potential for the customer to benefit; (2) a societal perspective that focuses on investments that have the potential to defer or avoid, at a lower cost, market investment in new generating facilities; (3) a wires and pipes perspective that considers what transmission and distribution investments can be deferred or avoided through lower cost public purpose investments; and (4) a social welfare perspective that seeks to maximize the benefits produced without regard for the cost of alternatives. According to Mr. Houser, MPC's supports using a mix of these alternative cost-effectiveness perspectives. MPC proposed the following USBC allocation.

Local Conservation	
Large Customer Rebate	$2,500,000
Other Customer Classes	$2,000,615
Market Transformation	
Regional (NEEA)	$ 370,000
Local (Montana)	$1,009,000
Low Income Assistance	
Weatherization	$ 500,000
Bill Assistance	$ 750,000
Advertise/Energy Share/uncollect.	$ 205,000
New Renewable Resources	$1,000,000
Research Development & Demonstration	$ 225,000
	$8,559,615

Large Customer Group (LCG), November 1997

12. Senate Bill 390 allows customers with loads greater than 1,000 kW to credit qualifying investments made in their own facilities against their USBC obligations. To MPC's proposal for an LCR account to cover these potential credits pre-qualified by a third party, LCG witness Katherine Iverson maintained that an industrial customer making a qualifying investment should not have to satisfy "pre-qualification" requirements different from what a utility must satisfy. Ms. Iverson stated that MPC's proposed accounting mechanism would discourage large customers from investing in efficiency because they would be required to pay twice -- first through the USBC charge on the bill and second for the direct cost of the investment. Ms. Iverson stated that credit for the customer's investment might not occur for months or years later. Ms. Iverson also questioned who would earn interest on the amount in the LCR account, MPC or the customers who paid into the account.

DEQ/NWPPC, November 1997

13. John Hines testified for the Department of Environmental Quality and Northwest Power Planning Council (DEQ/NWPPC, or the Administration) that MPC's transition plan fails to describe the criteria used to allocate USBC funds to various qualifying public purposes. MPC also did not propose a process for developing the criteria. Therefore, it is impossible to assess whether the proposed allocations are reasonable. Mr. Hines disagreed with MPC's proposed allocation, maintaining that more of the funds should be allocated to low-income programs. The Administration believes there is a large unfunded need for low-income support not fully recognized in MPC's proposed USBC fund allocation.

14. Mr. Hines testified that MPC failed to justify the dollars it proposed to allocate for conservation. Absent solid funding justification for conservation and renewables, more funding should be allocated to low-income programs. MPC did not describe how cost effectiveness will be evaluated and did not explain the objectives underlying its proposed acquisition of conservation and renewable resources. The Administration does not support using public purpose funds to subsidize resource development activities that will occur in through competitive markets or to buy down renewable resource costs to make them competitive.

15. Mr. Hines stated that the arbitrary nature of MPC's allocation proposal leads to distrust. He expressed concern about the potential for MPC to use public purpose funds to benefit its unregulated affiliates. For example, MPC could direct conservation programs funded by the USBC toward customers most likely to leave MPC's unregulated supply company, or the distribution company could direct USBC funds to an unregulated energy services affiliate without the safeguard of a competitive bid. Mr. Hines recommended requiring MPC to use a public process binding on MPC to establish a funding allocation mechanism, including criteria, definitions, goals and objectives. He disagreed with MP's proposal to reallocate unspent dollars in the large customer rebate account on other public purposes over the following year. According to Mr. Hines, MPC's proposal is inconsistent with Senate Bill 390 and recommended that any unspent large customer rebate dollars should be forwarded directly to the state universal system benefits funds.

Department of Health and Human Services (DPHHS), November 1997

16. Tom Schneider testified for DPHHS on low-income issues. He described low-income family demographics and the need for low-income energy assistance. Mr. Schneider stated that the 1998 federal LIEAP grant to Montana is 25% less than the 1995 grant, reflecting a trend of declining federal funding. Between 1995 and 1997, the median LIEAP family annual income in MPC's service territory was about $7,400, about 75% of the federal poverty level. State LIEAP benefits funding has generally declined in proportion to federal program funding cuts. Mr. Schneider attributed a dramatic reduction in the number of LIEAP clients to expected cuts in LIEAP programs. He asserted that there is a chronic need for a sustainable commitment and stabilized funding for bill and weatherization assistance to better assure affordable energy services for low-income families.

17. Mr. Schneider stated that MPC's leadership in low-income utility programs, through the LIEAP discount and free weatherization, has been beneficial and socially responsible. He testified that the rate and economic efficiency impacts of targeted low-income discounts are minimal and the social value is high. Programs such as LEAP discounts, weatherization, Energy Share contributions and winter shut-off protection are justified for several reasons, including resource value, social equity, participant savings and health and safety. However, even after the

federal benefit and the 10% LIEAP discount, the remaining LIEAP customer bill constitutes about 8% to 9% of median LIEAP family income. For the median Montana family the energy bill amounts to about 4% of family income.

18. Mr. Schneider testified that the allocation of 17% of USBC funds to low income programs specified in Senate Bill 390 is based on estimates by the Governor's Low Income Energy Advisory Council of short term low-income needs and is essentially equivalent to MPC's existing LIEAP and free weatherization funding levels. He believed that MPC opposes increasing its spending on low income programs until other utilities and energy providers are also required to participate. With the USBC provisions in Senate Bill 390, Mr. Schneider asserted that MPC's equity and level playing field concerns have been substantially addressed. He maintained that the USBC offers an attractive, long-term mechanism for achieving low-income public policy goals.

19. Mr. Schneider recommended a 15% LIEAP rate discount indexed to the amount of federal funding. A reduction in federal funding would trigger an automatic increase in the LIEAP rate discount. He suggested that a cap on the LIEAP discount could be implemented if the Commission felt it was necessary. Mr. Schneider stated that an average LIEAP discount cap of 20-25% would be appropriate. He also suggested replacing the flat discount with a sliding discount based on income in relation to the poverty level, similar to the four-step sliding scale rate discount for Great Falls Gas in Docket No. D96.7.123.

20. Mr. Schneider stated that MPC's proposal to allocate $2.5 million to a large customer rebate account unrealistically presumes that 100 percent of the possible large customer claims will occur. He asserted that MPC's LCR proposal unnecessarily limits the amount of USBC funds available for other recognized public purposes. Since MPC has offered demand side management (DSM) incentives and support in the large customer sector for several years with limited participation, it is unlikely that each of the qualifying customers will submit claims equal to their entire USBC obligation each year. He recommended that the Commission approve a $1.5 million LCR account allocation.

21. Mr. Schneider's position was that the Commission must take a leadership role in resolving USBC issues in this case. The Commission should approve an allocation approach that

allows for a publicly determined allocation. His recommended USBC allocation, assuming a pro rata redistribution of a $1 million reduction in MPC's proposed LCR account, is shown in Table 1. Mr. Schneider proposed alternative allocations that focus the redistribution on low-income.

Table 1.

Public Purpose	Pro rata Redistribution	Redistribution With Low Income focus
Local conservation		
Large Customer Credit Account	1,500,000	1,500,000
Other Sectors	2,330,770	2,000,615
Conservation Market Transformation		
NW Energy Efficiency Alliance	431,060	370,000
Local (MT) market transformation	1,175,512	1,009,000
Low Income Assistance		
Weatherization	582,513	843,643
Bill Assistance	873,770	1,265,464
Advertise/Energy Share/uncollectables	238,831	345,893
Renewable Resources		
Distributed resources and buy-downs	1,165,027	1,000,000
Research	116,503	100,000
Development and Demonstration	145,628	125,000
Total	**$8,559,615**	**$8,559,615**

District XI HRC, November 1997

22. On behalf of District XI Human Resource Council (HRC), Dr. Thomas Power testified that MPC should retain internal control over the USBC funds it collects rather than turn the funds over to the state administrator. However, Dr. Power did not believe that MPC should be completely free to modify the way it spends the funds. He testified that USBC funds are public funds and therefore the plan for spending the funds must be approved by the Commission. He recommended that the Commission approve specific USBC program categories (e.g., local conservation, renewable, market transformation, low income), and the budgetary amounts

associated with them. The Commission should indicate the priorities that should govern how funds may be shifted among the categories to make the best use of the funds. For example, funds could be diverted from other programs to satisfy an immediate low-income need. However, Dr. Power suggested that before allowing MPC to substantially deviate from Commission-approved program allocations, the Commission should provide an opportunity for public input or a hearing. Dr. Power suggested that it would be appropriate for MPC to freely move dollars within program categories in a way that would make sense programmatically.

23. Dr. Power disagreed with several aspects of MPC's proposed large customer rebate. First, large customers can avoid any responsibility for contributing to low-income programs by converting their entire USBC obligation into private investments in their own facilities. He believed that large customers share a responsibility to help fund low-income programs through a portion of their USBC. He recommended adding the large customers’ share of low-income funding to the amount MPC proposed to collect from all other customers (17 percent) so that a total of 22 percent of the USBC would be allocated to low-income assistance. Further, Dr. Power recommended using the low-income USBC dollars to increase the low-income discount from 10 percent to 15 percent, expand efforts to encourage eligible customers to take advantage of the discount and expand the low-income weatherization program to incorporate renewable-resource demonstration projects.

24. Dr. Power questioned whether Senate Bill 390 allows MPC to carry unclaimed funds in the LCR account into the next year. Dr. Power recommended that any unspent funds be forwarded to the state Administrator.

25. Michael Karp also testified for District XI HRC. He addressed the need for more effective design for MPC’s Low-Income Weatherization Program (LIWP) in the new environment. He also discussed options for improving the existing MPC Low-Income Weatherization Program and suggested coordinating renewable energy retrofit options with the Weatherization program. According to Mr. Karp, there are over 50,000 MPC low-income customers who still need assistance with their home energy efficiency. The current program only allows customers who heat with electricity to be considered for weatherization. He

suggested opening up the eligibility to all MPC low-income customers, not just those heating with electricity.

26. The design of the existing MPC low-income weatherization program, including the cost effectiveness test, should also be changed, according to Mr. Karp. The current program depends on support from federal weatherization funds in order to complete units. However, this funding has been reduced over the last few years and the appropriations are year to year. He suggested that MPC pay up to 100 percent of the cost of measures based on criteria that consider payback over the life of the measure, such as comfort, health and safety to the low-income client (a participant, not an avoided cost test). Mr. Karp suggested that the program be coordinated with, but not depend on, the use of the fair share of federal funds available.

27. Mr. Karp said that the existing MPC low-income weatherization program needs to be expanded to provide energy efficiency measures for heating and non-heating customers beyond current practice. Appropriate and comprehensive base load retrofit measures, such as replacing old inefficient refrigerators with new energy efficient models, changing incandescent lighting to compact fluorescent lighting, and other non-electric heat retrofits, are not part of the existing mix of allowable measures for the MPC program. Mr. Karp suggested allowing for the installation of energy retrofit measures that employ best practices in the industry, beyond those available for space heat customers. MPC should employ end-use measures, added to the existing program, such as light bulb replacement, refrigerator and appliance replacement, waterbed replacement, water heater wraps, low-flow showerheads and faucet aerators.

28. Mr. Karp stated that evaluating weatherization opportunities should move away from avoided cost criteria to a participant test, as pointed out by MPC witness Mr. Houser in his direct testimony. The focus should be on customer needs, new technologies, and desired public policy results. Mr. Karp suggested moving away from rigid cost-effectiveness tests that focus on resource acquisition toward a focus on what is best for energy savings, health and safety, and comfort of the low income rate payer. Low-income households should not have to pay for weatherization measures, because then these funds are not available for other basic needs. Mr. Karp suggested designing the program in such a way that low income households never have to, and are not solicited for contributions to, retrofit measures for their homes. He stated that the

current organizations such as Community Action Agencies should continue to provide these services even in light of his suggested changes.

29. Mr. Karp asserted that MPC should pursue renewable energy technology opportunities and demonstration projects that incorporate renewable technology for retrofits with low-income weatherization. Measures such as photovoltaic roofing tiles and domestic solar hot water heaters should be installed, monitored and evaluated for effectiveness in trying to encourage self-sufficiency for low income households. According to Mr. Karp, there is an opportunity to directly include low-income households in projects demonstrating solar applications in residential settings. Linked with weatherization and home repair programs, a solar initiative can further lower household energy bills and create more energy independence.

Natural Resource Defense Council (NRDC), November 1997

30. On behalf of NRDC, Rachel Shimshak testified that during most of this decade northwest utilities had some of the world's best conservation programs. However, uncertainty related to restructuring has caused many utilities, including MPC, to significantly cut conservation programs and shelve plans to invest in renewable resources. Ms. Shimshak maintained that without renewed commitments to invest in public purposes electric industry restructuring will lead to clear winners and losers. The narrow segment of customers that get early access to lower electricity prices will win. Absent adequate regulatory and legislative safeguards, energy conservation, low-income weatherization programs and renewable resources will lose.

31. Ms. Shimshak asserted that public purpose programs promote the common good through lower electricity bills, cleaner energy and a cleaner environment. She stated that if the benefits of restructuring come at the expense of the environment and the less advantaged, the promises of competition will ring hollow for the majority of MPC's customers and produce a net loss for all consumers. The enormous environmental and social impacts of energy production require policy makers to carefully restructure so that sound public policy objectives are not lost in the transition.

32. Ms. Shimshak stated that renewable resources face significant market barriers because markets focus on near-term, direct costs. Renewable resources have difficulty

competing because they have high capital costs in the short-term but low long-term costs. Renewable resources are also disadvantaged because they have values that are not easily quantified such as environmental benefits, local economic development, price stability, diversity, risk mitigation, and system reliability. She testified that classic economic analyses show that markets do not produce sufficient public goods such as renewable resources.

33. Ms. Shimshak testified that, based on EPA data, electricity production in the U.S. accounts for 20% of all toxic metal emissions, 32% of particulates, 33% of nitrous oxides, 36% of carbon dioxide and over 70% of sulfur dioxides. She asserted there is strong consensus in the scientific community that climate change associated with greenhouse gas emissions poses threats for drought, crop failure, more violent storms, coastal flooding, declining forest health, and increased human illness and mortality. Expanded energy efficiency and renewable resource investments can mitigate these impacts because they are sustainable sources of energy because they allow people to prosper without progressively degrading the environment or stealing from the living standards of future generations.

34. Ms. Shimshak asserted that the public understands the importance of moving electricity production to a green path. Consistently, surveys and focus groups across the country demonstrate strong and diverse support for the continued acquisition of conservation and renewable resources. Polls find that over 80 percent of the public are concerned about environmental quality and the majority are willing to pay more to develop renewable energy resources and install energy conservation measures. She stated that in a Massachusetts pilot program, 33% of residential customers selected their supplier for environmental reasons.

35. Ms. Shimshak recommended allocating 16 percent of USBC funds to new renewable resources, 17 percent to low-income bill assistance and weatherization, consistent with Senate Bill 390, and the remaining 67 percent to conservation and regional market transformation programs. Her recommendation is patterned after the recommendations contained in the Comprehensive Review of the Northwest Energy System Final Report. She stated that her recommendation is substantially the same as MPC's proposed allocation. The main difference is that MPC's proposal allocates 12 percent to renewables and adds 3 percent for public purpose research, development and demonstration. Since Senate Bill 390 curtailed USBC funds to 2.4

percent of retail electric revenues, rather than using 3 percent as recommended by the Regional Review, she does not support using USBC funds for research, development and demonstration projects. As long as viable opportunities exist for renewable resources, market transformation and conservation programs, these projects should be funded first.

36. Ms. Shimshak recommended that the Commission use her proposed allocation as the baseline allocation, but that MPC work with its Advisory Committee to adjust this baseline, as appropriate, to ensure that the funds are divided wisely among competing public interests. Since the USBC is assessed on customers of the regulated utility, she stated that the Commission should ensure that the funds are appropriately and prudently spent on various public purposes. She recommended that the Commission direct MPC to work with NRDC and other stakeholders to allocate USBC funds on a yearly basis as needs for the funds change and as markets and technology evolve.

37. Ms. Shimshak did not recommend specific conservation programs that should be funded through the USBC. However, she did recommend some specific renewable programs. The 16 percent renewable allocation amounts to $1.35 million. She stated that her solar allocation assumes that matching funds from federal solar resource programs can double MPC's solar funding.

38. Ms. Shimshak testified that it is important for Montana to invest in renewable resources. She stated that Montana has abundant wind and solar resources. Several counties in Montana are listed as among the best wind sites in the Northwest and average daily solar radiation in Montana is better than many areas west of the Cascades, and almost as good as areas in southern Idaho and points south. To transform the market for these resources, Ms. Shimshak stated it is necessary first to remove barriers to entry. This requires initially investing in new solar and wind resources to prove the resources, expand public knowledge and experience and build credibility. The second step is to foster a market that allows customers to choose electricity supplied by renewable resources. A third step involves fostering competition among suppliers so consumers get the lowest prices. Ms. Shimshak recommended that this dollar amount be spent as follows:

Solar Resources

Low-income demonstration projects	$200,000
Public sector demonstration projects	$ 75,000
Market development	$175,000
Subtotal - Solar	$450,000

Wind Resources

Distributed applications and projects	$100,000
Commercial cluster developments	$800,000
Subtotal - Wind	$900,000
Total Renewable	$1,350,000

39. Ms. Shimshak recommended that the Commission direct MPC to work with District XI HRC and the National Center for Appropriate Technology (NCAT) to administer renewable resource funds. Under her recommendation, funds allocated to renewable resources would be diverted to HRC and NCAT, which would then define appropriate renewable programs and manage a competitive bid process to select projects. HRC and NCAT would use technical oversight committees composed of representative from the wind and solar industries, state government, environmental groups, utilities, low-income groups and consumer groups. According to Ms. Shimshak, an independent, public process will ensure that renewable activities are achieved most cost effectively.

40. Ms. Shimshak proposed a solar demonstration project that targets low-income customers and public facilities such as schools and libraries. HRC would focus on identifying low-income households and each year would assess the applications and modify technology choices and program designs. NCAT would pursue demonstration projects in the commercial sector. Ms. Shimshak stated that through federal programs matching funds appear to be available to pursue solar projects in public institutions. She testified that if the public sees working solar applications sprinkled throughout the community, green marketing programs would benefit.

41. Ms. Shimshak also proposed a commercial wind project administered by NCAT. NCAT would conduct a series of competitive bids to choose sites in Montana that are suitable for development. With a USBC budget of $900,000 per year, she envisions two small commercial

wind developments. The most significant cost for wind power is the up-front capital expenses to build and install the turbines. She stated that the USBC could help overcome this barrier.

MPC Generation Sale and Revised Plan/Rebuttal Testimony, January 30, 1998

42. In its Rebuttal Testimony filed January 30, 1998, MPC witness Mr. Houser responded to LCG's concerns over pre-qualifying the investments that large customers may claim as credits against their USBC. He stated that large customers would be reluctant to make capital investments in public purposes without some assurance that they will be reimbursed for the investment. Further, fund administrators may need to determine whether the proposed application will be cost-effective. Pre-qualification is intended to protect the interests of large customers and is a standard element of public purpose programs that is intended to deter abuse.

43. Mr. Houser disagreed with LCG that the LCR accounting mechanism would discourage large customers from making public purpose investments, because the Commission would have to establish a tariff that collects USBC funds, whether or not large customers make qualifying investments in their own facilities. Neither MPC nor the Commission will know in advance whether large customers will make qualifying investments. Mr. Houser stated that the opportunity for large customers to avoid the USBC by investing in their own facilities provides a significant incentive. He asserted that MPC's proposal satisfies Senate Bill 390 without creating unnecessary barriers to customers. He stated that there is no merit to LCG's concern that large customers making qualifying investments would not see credits until months or years later.

44. Mr. Houser disagreed with DEQ that USBC dollars should not be used to encourage renewable resources, since Senate Bill 390 specifically lists renewable resource investments as qualifying public purposes. He also challenged DEQ's assertion that green resources will be able to exploit an adequate market niche in Montana, where energy and capacity are exported, transmission is constrained and opportunities abound for lower cost resources. Substantial market barriers exist which will prevent achieving the optimal level of public purpose investment in these resources. He agreed that market transformation is an important objective for both conservation and renewables, but stated that market transformation will not occur without substantial investment and hard work.

45. According to Mr. Houser, MPC opposed using USBC dollars collected from its distribution customers to fund public purposes outside its geographic service territory. There is a significant potential for MPC□s distribution customers to be disadvantaged until the USBC collection mechanism becomes more equitable by including all fuels, and until issues concerning equitable distribution of the funds are resolved. For example, MPC recognized that the plight of low-income consumers, with respect to both energy and non-energy issues, posed a problem. Other energy providers and businesses should contribute toward low-income energy issues to the same level as MPC before MPC is asked to contribute more.

46. Mr. Houser reiterated that MPC does not believe that the Commission has the authority to require MPC to operate any USBC programs, prescribe the allocation of USBC dollars among competing public purposes, or prescribe the design of specific programs. Senate Bill 390 does not specify how USBC dollars should be spent, other than that 17 percent must be allocated to low income assistance. He asserted that MPC□s plan complies with Senate Bill 390 so long as it describes the proposed programs and funding levels and the methods for determining need and cost effectiveness. He maintained that the Commission's USBC responsibilities are limited to (1) verifying that the transition plan adequately describes how MPC will comply with the USBC provisions of Senate Bill 390; (2) approving distribution tariffs to fund public purposes at the statutorily defined level; and (3) receiving annual reports on MPC's USBC related activities.

47. According to Mr. Houser, it is "painfully" obvious to MPC that Senate Bill 390 placed MPC in a no win situation with respect to USBC administration. Senate Bill 390 required MPC to provide a proposal for administering USBC funds without providing guidance on how to balance competing public purpose objectives, how to determine cost effectiveness and how to treat allowed credits. Whatever allocation MPC proposed would be controversial and subject to criticism. MPC proposed to work with a broad-based group of interested parties to establish an independent non-profit entity whose sole purpose is allocating and administering public purpose funds and programs. MPC would contract with this entity to administer all USBC funds MPC collects. Hopefully, use of an independent entity will remove concerns over self-dealing and anticompetitive behavior. The structure of the independent administrative body would be similar

to the Northwest Energy Efficiency Alliance (NEEA). A Board of Directors would collaboratively set organization policies and guidelines, determine the allocation of funds between various public purposes and, ultimately, decide which projects and programs to fund with USBC dollars. The board of directors would include balanced representation from MPC, government, electricity providers, trade allies, customers, legislators and special interests.

Intervenor Response Testimony, Spring 1998

LCG

48. In her April 1998 testimony, Ms. Iverson proposed a red-lined version of MPC's proposed USBC tariff. She stated that her version of the tariff describes large customers' payment obligations in more detail, taking into consideration the credits to which large customers may be entitled. She maintained that under her proposed tariff there is no need for a rebate and customers do not need to pay a fixed amount into the fund before the Company allows crediting to occur. According to Ms. Iverson, USBC funds are not utility revenues in the traditional sense. To the extent a customer makes its own qualifying public purpose expenditures MPC does not need to collect the USBC to recover those costs.

DEQ/NWPPC

49. Mr. Hines praised MPC's rebuttal filing for acknowledging a significant low-income problem, but said that MPC's refusal to increase low-income support until other energy providers and businesses contribute at the same level as MPC does not make sense. Mr. Hines maintained that additional low-income funding does not require MPC to collect additional funds and, because MPC is simply a collector of USBC dollars, the Company should be indifferent to how the funds are used. Mr. Hines concluded that MPC only wants to fund public purpose programs that allow the Company to achieve a competitive advantage. Mr. Hines stated that DEQ/NPPC, DPHHS and other parties have demonstrated a substantial unmet funding need for low-income programs and that MPC has also recognized this need. Mr. Hines recommended that the Commission increase the funding allocation for low-income programs to 30.4 percent, or $2.6 million dollars per year.

50. According to Mr. Hines, an independent USB fund administrator is more necessary following MPC's rebuttal testimony. MPC indicated that it plans to continue to operate DSM

programs internally until it establishes a third-party contractor but did not specify a time frame for setting up this mechanism. Under MPC's interpretation of Senate Bill 390 the Commission has no authority over how public purpose funds are spent. Mr. Hines stated that MPC is attempting to bypass public input into the process for allocating public purpose dollars and shed accountability for program implementation. He maintained that Commission regulatory authority over MPC's distribution company extends to the administration of USBC dollars collected by MPC. He recommended that the Commission approve appropriate definitions and guidelines for fund allocation if MPC chooses to operate its own public purpose programs to ensure a forum for public input and accountability for funding decisions. If MPC wants to remove public benefits programs from Commission oversight, it can transfer its entire USBC obligation and responsibility to the state fund. Otherwise, the Commission has authority over how USBC funds are used. On MPC’s proposal to contract with an independent administrator, Mr. Hines' opinion was that this could involve administrative redundancy and result it less dollars for direct funding of public purpose programs.

51. Mr. Hines' rebuttal testimony modified a portion of his direct response testimony. He initially recommended that MPC evaluate funding public purpose programs from a statewide perspective rather than just looking at its own service territory to ensure the highest benefit from each USBC dollar. However, MPC and others raised equity issues associated with requiring MPC to use a statewide perspective while cooperative utilities could focus on their own service territories. Therefore, Mr. Hines modified his testimony to support MPC's proposal to target conservation and renewable USBC programs within its service territory. Mr. Hines still believes a statewide perspective is appropriate for low-income programs.

NRDC

52. On behalf of NRDC, Ms. Shimshak supported MPC's proposal to establish an independent contractor to administer its USBC obligation, but with three caveats. First, MPC should remain accountable to the Commission with respect to USBC expenditures. Since the USBC fund comes from customers, Ms. Shimshak maintained that it should be subject to Commission jurisdiction. Second, the Board of Directors of the independent administrator should include an equal number of representatives from each of the public purposes that qualify

for USBC funding. Third, there should be no funding pre-conditions placed on the Board, other than the 17 percent for low income specified in Senate Bill 390.

53. Ms. Shimshak also responded to Mr. Houser's rebuttal testimony alleging that she exaggerated or overstated the potential for viable renewable energy resources in Montana. While his testimony relied on old data and diminished the importance of consumer choice in helping to create markets, she believed that her testimony conservatively demonstrated that USBC funds could be used to match green marketing efforts by developers and lower the cost for new wind generation in Montana. She asserted that experience by other utilities indicates that green marketing can be successful if the right product is brought to consumers in the right way. Appropriately using USBC funds to support green marketing may improve the chances for success in Montana.

DPHHS

54. Mr. Schneider submitted response testimony recommending specific USBC funding levels for low income assistance and weatherization and responding to MPC’s revised USBC proposals. Mr. Schneider testified that the range of alternative proposals for how the USBC should be implemented is staggering and in a state of flux. DPHHS is concerned that needs of low income families not get lost in the fragmented administrative process that has emerged. Mr. Schneider suggested that, over the years, existing Montana organizations have committed substantial resources to identifying low income needs and coordinating assistance and weatherization efforts (e.g. DPHHS, HRC, Energy Share, MPC and the Commission). The USBC process should not revert to “square one” on low-income issues.

55. The low-income component can be distinguished from other public purposes identified in Senate Bill 390, according to Mr. Schneider. Demonstrated low-income need is a long-term reality that extends beyond the four-year transition period. Low income needs will not be resolved through market transformation. Mr. Schneider stated that it is unfortunate that MPC has taken a very narrow perspective on the Commission’s authority. Mr. Schneider asserted that it is essential for the Commission to direct a specific allocation to low income programs, given MPC’s revised USBC proposals and the uncertainty surrounding the process contemplated by the Transition Advisory Committee.

56. Mr. Schneider recommended establishing a low income funding level of $2.6 million, or 30.4% of the total USBC. Mr. Schneider maintained that this is not a dramatic attempt to increase low income funding. DPHHS, DEQ/NPPC and others demonstrated low income needs in pre-filed direct testimony and Mr. Schneider asserted that his recommendations are consistent with those needs. Mr. Schneider maintained that the fact that LIEAP customers experience more than twice the relative energy burden as the median Montana customer justifies this level of low income funding. He recommended funding the LIEAP rate discount at $1,185,000, which produces an effective 25 percent rate discount. He also recommended funding an index reserve sufficient to cover a 25 percent reduction in federal LIEAP assistance. Low-income weatherization would be funded at $650,000 and a reserve account would be created to accommodate a 25 percent reduction in federal weatherization assistance. Mr. Schneider testified that it is appropriate to allocate USBC funds to Energy Share. Energy Share provides an added safety net for addressing specific low-income family needs. He recommended allocating $250,000 in USBC funds to Energy Share.

MPC Rebuttal Testimony, April 1998

57. Mr. Houser stated in his April 1998 rebuttal testimony that Senate Bill 390 does not provide any specific direction for how USBC funds should be allocated between various public purposes and that a utility should be allowed credit for any qualifying expenditures it makes within its service territory. He disagreed with intervenor testimony that MPC's original allocation should be modified, stating that the intervenors' arguments are narrowly focused and intended to increase spending on one or two "pet" public purposes. He asserted that MPC is the only party that has presented a balanced approach to administering and allocating USBC funds.

58. Mr. Houser recognized that the Commission has broad rulemaking authority related to implementing Senate Bill 390 as well as broad authority over regulated companies within the Commission's jurisdiction. However, with respect to the USBC, he stated that the Commission is responsible for two clearly defined functions. First, the Commission must approve tariffs that collect the USBC funds. Second the Commission can review annual reports filed by utilities. Beyond these functions, he maintained that the Commission does not have explicit authority to require specific administration of the funds.

59. Mr. Houser testified that, contrary to the assertions of some intervenors, MPC gains no sustainable competitive advantage by controlling the allocation and distribution of public purpose dollars. MPC is actually placed in a lose-lose situation because no matter how fairly and competitively the programs are designed and operated, there will be unnecessary and costly scrutiny of MPC's actions by regulators focusing on affiliated transactions.

60. Mr. Houser disagreed with LCG witness's proposal to define a large customer eligible to obtain credits for internal public purpose investments in terms of whether the customer's peak demand in any single month exceeds 1,000 kW. MPC's definition requires averaging the customer's 12 months of peak demands. He stated that MPC's definition is administratively less difficult and costly. For example, with LCG's definition it would be difficult to know from one month to the next what customers are eligible and which are not.

61. Mr. Houser responded to DEQ/NPPC witness John Hines's testimony that the Commission should disallow administrative costs for establishing a third party administrator as duplicative of state fund administrative costs. He asserted that an independent board would probably not cost any more than MPC would otherwise incur to administer programs itself, and Senate Bill 390 gives MPC the option of operating programs internally.

Findings of Fact and Discussion

62. Pursuant to Senate Bill 390 codified at Title 69, Chapter 8, Montana Code Annotated (MCA), the Commission has authority over all aspects of the collection and use of public purpose funds by a public utility for its own programs. However, any funds a utility forwards to the State universal systems benefits fund or universal energy assistance fund created pursuant to §69-8-501(14), MCA, are not subject to Commission jurisdiction. Because MPC could choose to forward its full obligation to the State universal systems benefits and universal energy assistance funds, the Commission cannot require MPC to implement any internal USB programs. However, USB programs provide important customer service, system reliability and efficiency, and public interest benefits. MPC would be a valuable contributor to a public process designed to develop creative and beneficial uses for these limited funds. MPC should resist the temptation to turn

over its full obligation to the State universal system benefits and universal energy assistance funds.

63. The Commission has explicit jurisdiction over MPC's transition plan. Section 69-8-202, MCA authorizes the Commission to approve, modify or deny MPC's transition plan, and enforce MPC's obligations under an approved plan, after conducting a contested case proceeding in accordance with the Montana Administrative Procedures Act (MAPA), §§ 2-4-601, et seq., MCA. Section 69-8-402, MCA explicitly requires MPC's transition plan to address public purpose programs, including at what level it will fund each program and the cost-effectiveness, need or other criteria used to determine the funding level for each program. Further, MPC must submit annual reports to the Commission that summarize the Company's public purpose activities. Taken together, these statutory provisions provide the Commission explicit authority to approve, modify or deny MPC's proposed USB charges and proposed funding levels for each program, if MPC intends to internally administer public purpose programs, and to monitor ongoing public purpose activities.

64. Existing statutes reinforce the Commission's authority over any public purpose programs MPC operates. Section 69-3-703, MCA explicitly requires Commission approval for utility purchases of, or investments in, conservation. Section 69-3-1206, MCA authorizes the Commission to require utilities to demonstrate that conservation purchases or investments contribute to efficient utility operations and efficient use of utility services before including the costs of these investments or purchases in rates.

65. Section 69-8-403, MCA reaffirms the Commission's authority to regulate and establish just and reasonable rates for public utility transmission and distribution service. Commission jurisdiction over a utility's internally operated USB programs is a reasonable extension of the Commission's existing and ongoing authority to regulate transmission and distribution service. The Commission maintains just and reasonable transmission and distribution rates, in part, by ensuring that utilities maintain appropriate system reliability and that system expansion is performed in an efficient manner. Maintaining system reliability and efficiently accommodating expanding demand, both within an existing service area and in new

areas, may involve targeted conservation, demand-side management and distributed generation approaches.

66. Section 69-8-103, MCA specifically defines USB programs to include cost-effective local conservation and renewable resource projects that provide transmission and distribution system benefits. Low-income assistance is also specifically identified as a USB program. While historically supporting low-income assistance through rate discounts, the Commission also tries to provide economically efficient price signals for all customers, including low-income, and will continue to have authority over distribution utility rate design. Commission authority over MPC’s internal USB programs is an integral part of the Commission’s comprehensive oversight of regulated transmission and distribution functions and its duty to ensure just and reasonable rates.

67. Section 69-8-102, MCA indicates that USB charges and programs are designed to protect the public’s interest by continuing certain programs that have been implemented by regulated public utilities in the past. The public has an interest in seeing these or similar programs continue as the structure of the industry changes. The Commission regulates MPC because the State has decided that some of MPC’s business activities are particularly affected with a public interest.

68. The Commission serves the public interest through processes that allow public involvement in decisions related to these business activities and by having representatives of the public make those decisions. Senate Bill 390 does not establish an alternative decision-making forum to that of the Commission, which would provide the public opportunities to participate in shaping these internal public purpose activities affected with a public interest. The Commission would neglect its responsibility by not asserting authority over MPC’s internal USB programs. The Legislature would have acted illogically if, in Senate Bill 390, it explicitly protected the public interest by preserving utility operated public purpose programs but at the same time removed the mechanism that the public uses to protect its interest in these utility activities.

69. In MPC's January 1998 rebuttal testimony, Mr. Houser decried the lack of legislative guidance in Senate Bill 390 relative to balancing competing public purpose objectives or guidance on determining cost-effectiveness. Legislating further guidance over MPC's internal

programs was unnecessary, because the Commission exercises authority over internal USB programs with the input of public process. If MPC forwards its entire USB obligation to the State, the State inherits the responsibility for balancing competing public purpose objectives.

70. Virtually all intervenors agreed that the Commission has authority over MPC's internal USB programs. Dr. Power testified for HRC that the Commission should retain authority over the use of USB funds because these funds are intended for public purposes and, therefore, the public should control their use. November 1997 Direct Testimony, p. 5 and January Response Testimony, p. 5.

71. Mr. Schneider testified for DPHHS and, along with DEQ and the Montana office of the Northwest Power Planning Council (NWPPC), represented Governor Racicot's Administration. According to Mr. Schneider, the Administration believes it is important for a public entity to make decisions about allocating limited USB funds. When a public utility chooses not to turn the funds over to the State, the Commission is the appropriate public entity. March 1998 Response Testimony, p. 8. Mr. Hines, on behalf of DEQ/NWPPC, testified that the Commission has authority over MPC's administration of USB funds through regulatory oversight of MPC's distribution utility. March 1998 Rebuttal Testimony, p. 3. Finally, NRDC's witness, Ms. Shimshak testified that MPC must be accountable to the Commission when it uses USB funds because those funds come from customer dollars. March 1998 Rebuttal Testimony, p 2.

Decision on Allocation of USBC Funds in MPC's Internal Programs

72. Section 69-8-401(2), MCA provides that the annual funding level for USB programs is 2.4 percent of the utility's annual retail sales revenue in Montana, measured at the level of the calendar year ending December 31, 1995. The utility is to collect this amount beginning January 1, 1999 through imposition of a universal system benefits charge. The Commission authorized imposition of this charge in Order No. 5986f, issued December 23, 1998, to collect $8,559,615 annually from its utility system customers to fund public purpose programs.

73. MPC and several intervening parties each testified about how these funds should be allocated among various public purposes, as shown in Table 2. MPC testified that it is the only

party in this proceeding that attempted to present a balanced approach to allocating USB funds. According to MPC's witness Mr. Houser, the intervenors' proposed allocations attempt to increase funding for "pet" public purpose categories. April 1998 Rebuttal Testimony, p. 3. However, as Mr. Houser recognized, Senate Bill 390 does not require any specific allocation, except that low-income assistance must account for at least 17 percent.

Table 2.

Allocation of USBC Funds MPC Docket No. D97.7.90

Public Purpose Category	MPC		Gov/HHS		NRDC		HRC		Region Review
Large Customer Rebate	2,500,000		2,500,000				2,075,000		
		53%		42%		63%		48%	52%
Local Conservation	2,000,615		1,072,000		5,384,615		2,000,615		
Market Transform – total	1,379,000	16%	1,025,365	12%		-----	1,379,000	16%	14%
NEEA	370,000		370,000		370,000		370,000		
Montana	1,009,000		655,365				1,009,000		
Low Income – total	1,455,000	17%	2,606,250	30%	1,455,000	17%	1,880,000	22%	
Bill Assistance	750,000		1,481,250						continue
Weatherization	500,000		812,500						14%
Energy Share/outreach	205,000		312,500						
Renewable Resources	1,000,000	12%	1,131,000	13%	1,350,000	16%	1,000,000	12%	16%
RD&D	225,000	3%	225,000	3%	-		225,000	3%	3%+
Total	8,559,615		8,559,615		8,559,615		8,559,615		

74. Although § 69-8-402(4), MCA requires MPC to describe the cost-effectiveness, need and other criteria on which it based its proposed level of funding for each USB program, MPC's transition plan is essentially void of these descriptions. In MPC's July 1997 Transition Plan testimony, Mr. Houser stated that MPC's proposed allocation considers the requirements in Senate Bill 390, the relative importance of various public purposes in Montana, need, cost-effectiveness and public policy. MPC also briefly discussed the various perspectives that can be

used to measure cost-effectiveness and expressed support for a measure that considers a mix of cost-effectiveness perspectives.

75. DEQ/NWPPC's witness, Mr. Hines, criticized MPC's transition plan for failing to define criteria for allocating public purpose funds or proposing a process to develop the appropriate criteria. November 1997 Testimony, pp. 2-5. He stated that because MPC has not identified the objectives of its proposed allocation, or the associated programs, it is impossible to assess whether the allocation is appropriate. MPC rebutted Mr. Hines' testimony by asserting that focusing on the underlying process and criteria for establishing allocations would not reduce controversy over the appropriate allocation, just make it harder to understand. January 1998 Generation Sale and Revised Plan/Rebuttal Testimony of Dave Houser, p. 12.

76. The record in the case does not establish that any one of the proposed allocations is superior to the others. DEQ/NWPPC introduced significant evidence concerning an immediate and ongoing low-income need, and MPC acknowledged this need. However, the record does not provide the public policy foundation to establish funding priorities and guidelines addressing how to weigh low-income needs against opportunities for cost-effective conservation, market transformation and renewable projects. Without this foundation, DEQ/NWPPC's testimony does not by itself demonstrate that its allocation is superior to the others. All of the proposed allocations increase low-income assistance over what MPC currently spends and all are technically acceptable under the requirements of Senate Bill 390. The Commission finds itself in a challenging dilemma. The Commission has the authority and responsibility to ensure that the public receives optimal benefits from limited public purpose funds beginning in January 1999, but does not have the ability to first construct the public policy foundation necessary to properly exercise its authority, at least for funds spent in 1999.

77. In response to a data request from DPHHS, MPC stated that the starting point for its proposed allocation was the Final Report of the Comprehensive Review of the Northwest Energy System (commissioned by the governors of Washington, Oregon, Idaho and Montana), issued in December 1996. The last column in Table 1 shows the allocation recommendations included in the Comprehensive Review Final Report. MPC used allocation percentages included in the report and made adjustments to reflect the lower 2.4 percent amount adopted by in Senate Bill

390. MPC then made additional adjustments based on internal discussions (see MPC's response to DPHHS-11). Absent Montana- or MPC-specific allocation guidelines, the recommendations of the Comprehensive Review provide a reasonable starting point. However, MPC incorrectly attributed the Comprehensive Review recommendation for low-income weatherization to a combined category of weatherization and other low-income energy assistance. The Comprehensive Review report recommended a specific percentage for low-income weatherization. The Report further recommended that utilities continue current energy assistance programs until states adopt alternative mechanisms such as universal electrical service funds.

78. Table 3 reflects an adjustment to MPC's proposed allocation based on the Regional Review recommendation on low-income weatherization and the continuation of MPC's low-income rate discount at its current level of approximately $500,000 per year. In order to maintain total USB charges at MPC's $8,559,615 obligation, each public purpose category is adjusted on an equal-percent basis. Then the local conservation category is increased in order to retain MPC's proposed allocation for research and development (R&D). All of the intervenors retained MPC's allocation to this category, except NRDC. NRDC asserted that actual projects should be funded before allocating funds to R&D. The Commission finds that this allocation provides a reasonable starting point. A more detailed worksheet showing how this allocation was derived is provided as Attachment 1 to this order.

Table 3.

Public Purpose Category	**Allocation Amount**	**Allocation Percent**
Large Customer Rebate	**$2,500,000**	
Local Conservation	**$1,803,838**	**50 %**
Market Transformation NEEA Montana	**$1,132,209** **370,000** **762,209**	**13 %**
Low-Income Bill Assistance Weatherization Energy Share/outreach	**$1,604,614** **750,000** **500,000** **354,614**	**19 %**
Renewable Resources	**$1,293,954**	**15 %**
R&D	**$225,000**	**3 %**
Total	**$8,559,615**	**100 %**

79. Most parties addressing USB issues agreed that there is an unmet low-income need. Therefore, absent an established public policy foundation for weighing low-income needs against opportunities for cost effective conservation, renewable resource acquisition and research and development, it is reasonable to establish a low-income priority for MPC's 1999 USB fund allocation. For the 1999 funding year, the allocation to renewable resource acquisition should not be more than 13% of MPC's total USB obligation. In addition, any funds in the Large Customer Rebate account not claimed by November 30 should be reallocated to low-income programs. The allocation that MPC should endeavor to implement in 1999 is shown in Table 4. Bill assistance, weatherization and Energy Share should each receive an allocation that meets or exceeds what MPC spent in 1998 within the low-income category. MPC should make every attempt to achieve this allocation, as directed. However, the Commission recognizes that MPC should be afforded reasonable flexibility to reallocate funds when confronted with unique and unknown circumstances that will inevitably arise. In its annual summary report to the Commission, pursuant to § 69-8-402(8), MCA, MPC should document the reasons for any deviation from the directed allocation.

Table 4.

Public Purpose Category	**Allocation Amount**	**Allocation Percent**
Large Customer Rebate	**$2,500,000**	
Local Conservation	**$1,803,838**	**50 %**
Market Transformation NEEA Montana	**$1,132,209** **370,000** **762,209**	**13 %**
Low-Income Bill Assistance Weatherization Energy Share/outreach	**$1,785,818**	**21 %**
Renewable Resources	**$1,112,750**	**13 %**
R&D	**$225,000**	**3 %**
Total	**$8,559,615**	**100 %**

Future Process for Allocating Public Purpose Funds

80. In its January 1998 Rebuttal Testimony, MPC proposed establishing an independent, non-profit corporation to allocate funds generated by MPC's USB charges and administer public purpose programs. MPC stated that this independent administrator would be modeled after the Northwest Energy Efficiency Alliance (NEEA). The administrator would consist of a board of directors with balanced representation from various affected interests and would be funded with a portion of the USB funds. The board would set organization policies and allocation guidelines and make project and program funding decisions. MPC would contract with this independent corporation to administer all of its USB funds.

81. MPC's proposed independent administrator could be a reasonable approach. However, MPC's description of the administrator reflects MPC's position that the Commission has no authority over the allocation or use of USB funds. Only DEQ/NWPPC's witness Mr. Hines and NRDC's witness Ms. Shimshak submitted testimony responding to MPC's proposal. Mr. Hines stated that the independent administrator should develop the criteria and guidelines for allocating public purpose funds through a public process, followed by the Commission's

approval of these criteria and guidelines. Ms. Shimshak stated that she would support the proposed independent administrator as long as MPC remains accountable to the Commission for the use of USB funds. She also stated that the board of directors should consist of an equal number of representatives from each of the public purpose categories funded by USB charges, as well as balanced representation from customer, utility and other public interests.

82. The Commission has jurisdiction over MPC's internal USB programs. Therefore, to authorize MPC to establish an independent corporation must involve one of the following arrangements: (1) the Commission must have regulatory authority over the independent corporation, or (2) MPC must have control over the independent corporation in order to ensure compliance with Commission decisions. The Commission could not assert jurisdiction over a new, non-profit corporation that provides contract services for MPC related to USB programs. An MPC contract with such an independent administrator is similar to an MPC contract with, for example, Xenergy to perform energy audits; the Commission does not regulate Xenergy. However, if MPC has control over the independent corporation, the corporation may not truly be independent.

83. The Commission could use several alternative approaches to establish a public process for determining future USB fund allocations. First, the Commission could direct MPC to develop a proposal for an independent USB fund administrator premised on Commission authority over MPC's internal USB programs. The proposal would describe the composition of the board of directors and explain the process by which board decisions related to operating rules, allocation criteria and guidelines, public purpose priorities, goals and strategies will be afforded public review through a Commission process. This approach could conceivably involve several filings by MPC or the independent entity to establish an operational independent administrator. For example, the Commission might first conduct a proceeding that would lead to approval of the basic structure of the board of directors and the relationships between the administrator, MPC and the Commission. Once the Commission approved the structure of the administrator, the Commission might conduct another proceeding to address the operating rules, decision criteria and guidelines developed by the administrator to allocate USB funds and implement USB programs. Thereafter, annual filings could occur, pursuant to Senate Bill 390,

that would analyze that year's activities and review the administrator's proposal for the next year's allocation. If the independent administrator process is working well, these annual filings could be uncontested and the Commission process would serve to collect information and provide a public interest safety net.

84. Under another approach, the Commission could initiate a rulemaking to establish the guidelines for allocating USB funds. These guidelines could be modeled after the integrated least cost resource-planning guidelines (ARM 38.5.2001-2012). These guidelines would require utilities to submit public purpose plans on an annual basis that are consistent with the Commission's allocation guidelines. The Commission would provide interested persons an opportunity to comment and request a hearing before approving or modifying the proposed allocation. If this approach were used the Commission could develop guidelines designed to appropriately integrate USB programs with other utility obligations to maintain reasonable reliability, expand delivery systems efficiently, promote efficient use of utility services and efficient rates.

85. These two alternatives may not be mutually exclusive. For example, if the Commission developed allocation guidelines through a rulemaking proceeding, the Commission may not need as many proceedings to establish MPC's independent administrator. After the Commission approved the basic structure of the administrator the administrator would use the allocation guidelines to develop MPC's annual public purpose plan. If MPC's independent administrator works well, the Commission would expect little opposition to the public purpose plan that the independent administrator develops for MPC.

86. The record in this case is not well developed in regard to the allocation approaches just described. Therefore, before making a final decision the Commission will host one or more roundtable discussions with interested parties.

Miscellaneous Issues

87. LCG disputed MPC's initial proposal to pre-qualify expenditures that large customers could claim as credits against universal system benefits charges. The issue of large customer credits was addressed by the legislative Transition Advisory Committee (TAC) created in § 69-8-501, MCA. The TAC resolved to recommend to the 1999 legislature modifications to the

Senate Bill 390 that would resolve the pre-qualification issue in this proceeding. At the time this order was drafted this proposed legislation (HB 337) had not yet been voted on by the legislature. Assuming that the TAC's proposed legislation will become law, the pre-qualification issue in this proceeding will be moot. If the TAC's proposed legislation is not passed, the PSC will revisit the pre-qualification issue.

88. DEQ/NWPPC's testimony in this proceeding recommended significant changes to both the level and the structure of MPC's low-income rate discount. The Commission has asserted jurisdiction over MPC's use of USB funds for internally operated public purpose programs, such as a low-income rate discount, and directed MPC to increase the allocation to low-income programs above what MPC had proposed in its transition plan. Neither MPC, MCC nor other parties critically reviewed the specific issues raised by DEQ/NWPPC concerning the appropriate size and structure of the low-income rate discount. The record is not sufficient for the Commission to approve DEQ/NWPPC's recommendations in this order. The Commission expects that low-income rate discount issues will be analyzed more comprehensively in future USB allocation and distribution rate proceedings.

89. HRC witness Mr. Karp recommended significant design changes in MPC's low-income weatherization program. Again, the record in this proceeding is not developed enough on this issue for the Commission to order the recommended changes. Program design issues should be addressed through the USB allocation mechanism that has yet to be established, or in future allocation proceedings before the Commission. This decision also applies to NRDC's recommendations for a low-income solar demonstration project and other renewable projects coordinated with HRC and the National Center for Appropriate Technology.

90. In its Order Implementing Universal System Benefits Charge (Order No. 5986f), Finding No. 6, the Commission directed MPC to remove from other rate schedules recovery of universal system benefits program expenses that are recovered in the E-USBC-1 tariff schedule rates. Because the double recovery was judged to be relatively small, the Commission postponed adjusting the other rate schedules until the Tier 2 phase of this proceeding, which will involve other rate adjustments related to transition costs.

91. The record in this proceeding pertaining to the net revenue increase MPC can implement pursuant to § 69-8-211(7)(a), MCA, is confused. Several MPC data responses, including responses to LCG-47, LCG-70, MCC-214 and MCC-313, provide some insight into this issue. However, it would be useful if all relevant information were available in a single, comprehensive exhibit. In compliance with this Order, MPC must create an exhibit explaining and illustrating the net revenue increase it believes is necessary to establish universal system benefits programs at the full amount. In the exhibit MPC should address how the net revenue increase is influenced by factors such as the current amount of rate based conservation, levelization of conservation investments in the CTC-RA, existing public purpose expense items in the revenue requirement and differences between business plan public purpose budgets and the funding level required in the Act.

CONCLUSIONS OF LAW

1. All Findings of Fact are incorporated in this Order as Conclusions of Law.

2. MPC furnishes electric service for consumers in the State of Montana and is a public utility under the regulatory jurisdiction of the Montana Public Service Commission. The Commission properly exercises jurisdiction over MPC's rates and operations. §§ 69-3-101 and 69-3-102, MCA.

3. The Commission exercises authority over public utilities and the electric utility industry restructuring pursuant to its authority under Title 69, Chapter 8, MCA (Senate Bill 390 or "Electric Utility Industry Restructuring and Customer Choice Act," effective May 2, 1997).

4. Pursuant to Title 69, Chapter 8, MCA, the Commission has the duty to implement a Universal System Benefits Charge, as enacted by the legislature in 1997, to be imposed beginning January 1, 1999. § 69-8-402, MCA.

5. The Commission provided adequate public notice of all proceedings and an opportunity to be heard to all interested parties in this Docket. §§ 69-3-303, 69-3-104, and 69-8-202, MCA; and Title 2, Chapter 4, MCA (Montana Administrative Procedures Act).

ORDER

THE MONTANA PUBLIC SERVICE COMMISSION HEREBY DIRECTS THE FOLLOWING: Montana Power Company shall apply the following allocation of the funds collected from the Universal System Benefits Charge implemented in Order No. 5986f for its internal programs.

Public Purpose Category	**Allocation Amount**	**Allocation Percent**
Large Customer Rebate	**$2,500,000**	**50 %**
Local Conservation	**$1,803,838**	
Market Transformation NEEA Montana	**$1,132,209** **370,000** **762,209**	**13 %**
Low-Income Bill Assistance Weatherization Energy Share/outreach	**$1,785,815**	**21 %**
Renewable Resources	**$1,112,750**	**13 %**
R&D	**$225,000**	**3 %**
Total	**$8,559,615**	**100 %**

As provided in this Order No. 5986g, the Commission recognizes the need for flexibility when establishing these programs in 1999. For extraordinary or unique circumstances, MPC may vary from this allocation, but must provide an explanation in its annual reports.

The Commission will establish a process as set forth in this order for determining future allocation of the USBC after 1999.

DONE AND DATED this 2nd day of February, 1999 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair

BOB ANDERSON, Commissioner

GARY FELAND, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.

Attachment 1

Public Purpose Category		pct of MPC Obligation	adjusted allocation		pct
Large Customer Rebate				2,500,000	
Local Conservation	4,451,000	52%	4,205,349	1,803,838	50%
Market Transform -- total	1,198,346	14%	1,132,209	1,132,209	13%
NEEA				370,000	
Montana				762,209	
Low Income -- total	1,698,346		1,604,614	1,604,614	19%
Bill Assistance	500,000	current	472,405	750,000	
Weatherization	1,198,346	14%	1,132,209	500,000	
Energy Share/outreach				354,614	
Renewable Resources	1,369,538	16%	1,293,954	1,293,954	15%
RD&D	342,385	4%	323,488	225,000	3%
Total	9,059,615		8,559,615	8,559,615	
MPC obligation	8,559,615				
percent	0.94				